IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

Criminal Writ Petition No.1283 of 2006

Bhawarlal Ganeshramji Sharma & Ors. ...Petitioners

vs

The State of Maharashtra ...Respondent

with

Criminal Writ Petition No.1284 of 2006

Vidya Jagdish Joshi ...Petitioner

vs

The State of Maharashtra ...Respondent

Mr.A.P.Mundargi with Mr Ganesh Gole for the Petitioners in both the petitions

Mrs. Poornima H Kantharia, Additional Public Prosecutor for the respondent.

CORAM: KSHITIJ R. VYAS, C.J.

DATE: JULY 7, 2006.

P.C.:-

Rule. Respondents waive service. By consent rule is taken up for hearing forthwith.

The petitioners in Criminal Writ Petition No.1283 of 2006 (original accused Nos.11, 12 and 4 respectively) have challegned the order dated 16th January 2006 passed by the

learned 2nd Additinonal Sessions Judge, Satara in discharge application being Exhibit Nos.306, 351 and 352. The petitioner (original accused No 2) in Criminal Writ Petition No.1284 of 2006 has challenged the order dated 7th October 2003 passed by the learned 2nd Additional Sessions Judge,Satara in dischage application being Exhibit No. 181 in Sessions Case No 10 of 2002. The petitioners, hereafter are referred to as the accused in their respective numbers for the brevity's sake. The accused have prayed for discharging them from all the charges framed against them. Since both the petitions arise out of the same sessions case No.10 of 2002, they have been heard together and disposed of by this common order.

2. It may be stated that accused Nos.11 and 12 have earlier filed an application under section 227 of the Criminal Procedure Code vide Exhibit 181 for discharge, which was rejected on 7th October, 2003. The accused challenged the said order by filing petitions being Criminal Writ Petition Nos 1387 of 2004 and 194 of 2005 before this court. This court on 27th September, 2005 and 9th August, 2005 respectively decided the same and set aside the order passed by the trial court and directed the trial court to decide the applications in accordance with law afresh as expeditiously as possible and preferably within a period of 3

months from the date of the order. Accodingly the accused No.11 filed application being Exhibit No. 351 and accused No.12 filed application being Exhibit No.352 under section 227 of the Code of Criminal Procedure.

3. The accused No.2 Vidya Joshi and accused No.4 Hema Joshi are wife and daughter respectively of Shri Jagdish Joshi, accused No.1, while accused No.11 Bhavarlal Sharma, is a family friend and accused No.12 Moharsingh Sharma, is the manager of accused No.1 in his business. All the accused are being prosecucted for offence punishable under section 302 read with section 120B of the Indian Penal Code in Sessions Case No.10 of 2002 pending before the learned Additional Sessions Court, Satara. The prosecution case, in brief, is as under:

4. That the complainant Devendra Singh Parihar was residing with his wife and son deceased Kunal at Panchgani. In or about March 1999, deceased Kunal had organised an entertainment show, which was sponsored by accused No.1. -J.M.Joshi. During this period deceased Kunal was introduced Hema, daughter of accused No.1-J.M.Joshi and the said acquaintance was culminated into a love relationship.

Subsequently, both of them were found missing from their respetive houses. On 29th May, 2000, the accused No.2 Mrs Vidya J. Joshi called the complainant and made inquiry whether her daughter Hema and deceased Kunal were in the house or not. On the next day, one Amarnath Jain and Umesh, co-accused Nos. 5 and 7 visited the school of the complainant and made threatening enquiries about Hema. It was then revealed that deceased Kunal had eloped with Hema. Thereafter, from time to time the family members of the accused No.4, Hema Joshi with Vidya Joshi were searching for Hema and Kunal. The complainant then reported the said matter to the Addl. Commissioner of Police, Pune. The father of the accused No.4 Hema Joshi also complained that deceased Kunal, with the help of the complainant, has kidnapped his dauthter Hema.

5. On 27th June, 2000, the deceased Kunal contacted the complainant and informed him that he is at Gauhati with Hema. From the record it appears both of them married each other in May 2000. Thereupon, the complainant and his wife met them and brought them to Mumbai. Thereafter, with the help of advocate Bhog, they prepared an affidavit of Hema and produced the same before P.I.Patil, Crime Branch,

Pune and all of them returned to Panchgani. They tried to pursue Hema to return to her house. However, she refused. Thereafter the complainant came to Pune along with Hema to met his advocate and Hema agreed to stay with her mother. Few months thereafter, i.e. in Decembner 2000, the accused No.2 called the complainant and abused him. The complainant filed a complaint with Superintendent of Police, Satara and submitted the copies of the same to Addl C.P. Pune. Even thereafter threats were given to the complaiannt and his family by the accused. The complainant then requested his advocate Shri Bhog to talk to the accused No.1 and accordingly his advocate had a detailed discussion with the accused No. 1 and informed the complainant that henceforth Mr. Joshi will not call the complaiant. Thereafter Kunal's marriage was settled with another girl and was scheduled on 30th November, 2001.

6. On 21st April, 2001, deceased Kunal left Panchgani for Mahabaleshwar in his Maruti car at 6.30 p.m. At about 8.30 p.m. One Nitin Kasurde, a taxi driver residing at Panchgani, informed the complainant that Kunal is lying in a pool of blood on Mahabaleshwar road and his car is parked at the same spot. The complainant rushed to the spot and took his

son in injured conditon to the hospital. However, he was declared dead. Thereafter the complainant lodged the First Information Report at Mahabaleshwar Police Station against unkown person and an offence was registered under section 302 of IPC at C.R.No 3 of 2001 of Mahabaleshwar Police Station.

7. On 22nd April, 2001, the complinant made allegation that as Kunal's marriage was fixed with Meenal, the acused No.1 and his family members developed a grudge and hatched a conspiracy with co-accused Umesh, Suresh and the petitioner and have murdered his son.

8. On completion of investigation, a final report was filed before the Sessions Court, Satara and the case was numbered as Sessions Case No.10 of 2002. Petitioners in both the petitions filed applications for discharge before the Sessions Court under section 227 of the Code of Criminal Procedure. The learned Sessions Judge, by his order dated 7th October 2003 and 16th January, 2006 was pleased to dismiss the both applications on the grounds that the petitioners took part in threatening the family members of the complainant. The petitioners alongwith the other accused

hatched a conspiracy to kill the deceased due to the fact that engagement of deceased Kunal had taken place with one Minal from Baroda. The learned Sessions Judge observed that though there is no direct evidence regarding criminal conspiracy, the statements of complainant and his wife speak about a deep grave suspicion about the involvement of the petitioners and hence there is no case for discharge.

9. As stated above the petitioners are challenging the orders dated 7th October, 2003 and 16th January, 2006 passed by the learned Additional Sessions Judge, Satara in these petitions.

10. The leaned counsel Shri A.P.Mundargi, appearing for the petitioners submitted that there are no overt acts attributed to the petitioners regarding the actual murder. He submitted that the learned Judge, after having observed that there are no overt acts attributed to the petitioners regarding the actual murder, has erred in concluding that grave suspicion of the complainant and his wife about the involvement of the petitioners is sufficient to infer a criminal conspiracy. The learned counsel submitted that accepting the case of the prosecution as it is, there is absolutely no material against the petitioners to frame charges with the aid of section 120B of

the Indian Penal Code. The learned counsel submitted that admittedly in the first information report, not even a whisper is found about the petitioners, much less any suspicion was expressed against them by the complainant. Finally he submitted that considering the material collected in the investigation there is absolutely no material filed on record on the basis of which a reasonable likelihood of the petitioners being convicted of any offence in connection with the murder of Kunal could be predicted and the alleged threats are woefully inadequate for connecting the petitioners with the crime. Under the circumstances allowing the prosecution to continue against the petitioners would be an abuse of process of the court and, therefore, the proceedings against the petitioners be quashed.

11. On the other hand the learned Additional Public Prosecutor Mrs Poornima Kantharia has submitted that a conspiracy was hatched by all the accused to kill Kunal right from the date when the deceased Kunal and Hema eloped. When accused Nos.2,11, and 12 called the complainant and made inquiry about Hema and deceased Kunal they gave threats. By inviting my attention to the statements of the witnesses about the parts played by Atmaram Jain and

Umesh , co-accused Nos 5 and 7, who wanted to teach a lesson to the deceased Kunal, accused No.1 being a businessman hatched a well laid out conspiracy to kill Kunal. In pursuance to the said conspiracy, contract killers were appointed by accused No.16 and said hatched plan was carried out by all the accused at about 8.30 p.m. at Panchgani Mahabaleshwar road. In the submission of the learned Additional Public Prosecutor, petitioner- accused who have given threats to the complainant, are conspirators and, therefore, they cannot be discharged at this stage.

12 I have gone through the statements of the material witnesses. Before I consider the rival submissions of the parties, it is necessary to consider the scope of interference in the matter of discharge under section 227 of the Code of Criminal Procedure. The Apex Court in the case of Niranjan Singh Karam Singh Punjabi vs Jitendra Bhimrj Bijjia and ors, AIR 1990 SC 1962 has observed that “" from the above discussion, it seems well settled that at the section 227-228 stage the court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. The court may for this limited

purpose sift the evidence as it cannot be expected even at the initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case". Thus when an application for discharge is made, the court is certainly required to evaluate the material and documents on record only with limited object of finding out if facts emerging therefrom disclose the alleged offence. The court is not required to sift and weigh the evidence at this stage. Nevertheless, the limited evaluation of the material warranted as held by the Apex Court in the case of Niranjan Singh (supra) .

13. Reading the statements of the complainant Devendra and Renuka, father and mother respectively of the deceased, Hemant Kudalkar, ex-employee of the complainant, advocate Mr.Bhog, who was present with the complainant's family at the police station, the following facts emerge.

14. On 21st May, 2000 the deceased Kunal and accused No.4 Hema eloped, moved to different parts of the country and then got married. On 25th May, 2000 thrats were given to the complainant by accused Nos. 11 and 12 by visiting the Panchgani and Pune. Even accused No.2 also gave threats.

The couple returned on 27th June, 2000. On 18th February 2001 the complainant Devendra gave an application the police station wherein he has state that he has no complaint against anybody. On 21st February, 2001 the engagement ceremony of the deceased Kunal with Meenal, a girl from Baroda took place.On 21st April, 2001 the deceased Kunal was assaulted when he left Panchgani for Mahabaleshwar in his Maruti car at 6.30.p.m. From the aforesaid dates of events it is clear that the prosecution story is in three parts. On 21st May, 2000 when the couple eloped and on 27th June, 2000 when they returned, the temper was running high between the parties and more particularly on accused side when the accused Nos.11, 12 and 2 gave threats to the complainant, as according to them Hema was kidnapped by the deceased. Things cooled off on 18th February 2001 when the complainant Devendra himself gave an application by stating that he has no complaint against anybody. In consequence of the same on 21st February, 2001 engagement ceremony took place between the deceased and Meenal, a girl from Baroda. There are certain e-mails on record alleged to have been sent by Hema to Kunal between the period 29th January, 2001 and 26th March, 2001, when she was kept away from the deceased Kunal. On perusal of

the same it appears that she has shown deep feelings for the deceased. In fact she has expressed sincere love for him. From the statements of Shankar Anand Salunke, Hemant and Ms Desai it appears that the so-called conspiracy was hatched between the period of March and April 2001 regarding the part played by accused No.7 and other co-accused. Reading the said statements it appears that the other co-accused wanted to teach a lesson to the deceased by breaking his hands and legs as he has betrayed Hema.

15 Thus reading of the entire statements of the aforesaid witnesses it clearly appears that accused Nos.11,12 and 2 have given threats to the compalinant side during the period between 29th May, 2000 and 27th June, 2000. Renuka, wife of the complainant in her letter dated 9th June, 2000 addressed to the Additional Commissioner of Police, Pune has made allegations againat accused No.12 stating therein that "pursuant to this inquiry of Mrs J.M.Joshi, we started receiving frequent threats from henchmen under the leadership of one Capt. Sharma who is alleged to be the manager working under M. J.M.Joshi in his business. We were intimidated and threatened by a posse of people surrounding our educational institution and also following us all over Panchgani and Pune". It is further alleged that "On

6th of June while my husband and me were sitting in the office of Mr. Patil, Mr. Joshi came there alongwith Capt. Sharma and some of his agents and tried to accuse us of being a party to the disappearence of Mr. Joshi's daughter. I strongly protested to the act of Mr. Sharma and Mr. Joshi constantly imputing that he and my husband have collaborated in the said act of the children". In her statement dated 22nd April, 2001, again Mrs Renuka alleged that " Then on the said date 21st May, 2000 at 6.00 hrs one person named Suresh, other persons named Captain Sharma and Amarnath these three alongwith ten to fifteen people came our home at Panchgani by three vehicles. Suresh, Captain Sharma and Amarnath entered our house. I had seen Suresh and Amarnath in Joshi's house and I know them. Those three said that Kunal, Hema and two more had gone somewhere and they with a hundred vehicles and four hundred people were searching for them and Yogesh Saheb and Joshi Saheb had given order to shoot up Kunal after they were found" ------ "" There , in the office of A.C.P Shri Ingale the police had called Suresh, Yogesh Joshi, Jagdish Joshi, Umesh, Amarnath and Sharma and warned them. Joshi at that time gave his statement against us tht we abetted in kidnapping his daughter Hema and thus made a false accusation agaisnt us. Despite police acation was taken against Joshi family they were

busing and threatening us. Generally by the end of June one peson named Bhavarlal Sharma (accused No.11) came our home and said that there was security supply at Gandhinagar and Ahmedabad and he had committed two murders there. He told us to give us address of Hema and Kunal otherwise he would commit our murder too"------"Generally on 27th June, 2000 or near about our son Kunal telephoned us in our home and stated that Hema was with him and they two were at Gohatti. We asked him to wait there and then I and my husband went to Gawhatti by aeroplane on the day dated 29.6.2000. We took halt in the lodge in which Kunal and Hema were living. We four arrieved in Mumbai by a morning plane and took halt there. We called our lawyer Shri Bhog. Miss Hema willingly made her affidavit. Then we came from Mumbai to the office of Police Commissioner. Statemetns of Kunal and Hema were taken in the office of Police Inspector Patil. At that time Vidya Joshi (accused No.2) and Amarnath were also present there as they were called by the police. We asked Hema to go with her mother but she was not willing to go with them due to fear of Joshi. She came with us to Panchgani. We were asking her to go her home but she was declining. Thereafter Bhavarlal Sharma, Vidya Joshi, Yogesh Joshi came to our school. Asking us to come to our house at Pune to demand Hema's hand in

marriage. They tried to pursuade Hema but Hema declined to go with them. They then abused and threatened us".

16 The complainant Devendra in his statement dated 22nd April, 2001 supported his wife Renuka as far as the allegations against accused Nos 11, 12 and 2 and, therefore it is not necessary to renarrate the same again. As aforesaid, the only allegation against accused Nos. 11,12 and 2 is that they have given threats. One should not loose sight of the fact that accused No.4 Hema, a young girl of accused No.1, had ran away with the deceased and, therefore, it is but natural and understandable that the family and the fiends of accused No.1 were keen to see that Hema must return safely and, therefore, naturally temper was running quite high and when they came to know that the deceased had taken away Hema, something must have been uttered, which excited the complainant side. That cannot be viewed seriously. In any case it is too much to say that by giving threats, the accused have hatched a conspiracy to commit murder of the deceased Kunal.

17 It is not disputed that the accused have never given any threats or have done any overt act in furtherence of the alleged conspiracy after the couple returned in June 2000. Mr.

Netraprakash Kishorchand Bhog, advocate friend of the complainant in his statement has stated that he alongwith one Atmaram Jain, Narayan Shah, his junior Shri Shirke and Ms Joshi went to the office of the Registrar at Bibwewadi on two/three occasions. He was representing Parihar family. According to him they acted and represented Hema and Kunal for the office of Registrar in good faith and as per their instructions they were representing them. When the Registrar removed the marriage form of Hema and Kulan and when it was tore everybody was happy. The aforesaid incidence took place in a very friendly manner. Both the families were under the impression that this will benefit both Kunal and Hema and accordingly the affidavits of Hema and Kunal was prepared. From the aforesaid statements it is clear that when the Registrar removed the marriage form of Hema and Kunal and when it was torn, both families were happy and said incidence took place in a very friendly manner. This incidence took place in 2001. Renuka, wife of the complainant in her supplemental statement dated 14th August, 2001 has also stated that on 18th February, 2001 her husband Devendrasingh Parihar made an application to the Police wherein he stated that he has no complaint against anyone. Hence a note was taken down and the aforesaid application was sent to the Commissioner of

Police. The aforesaid facts, in my opinion, would go to suggest that the dispute between the complainant side and accused side had in fact come to an end, which has cleared the way of performing the engagement ceremony between the deceased and Meenal on 21st February, 2001. From the statement of Shankar Anand Salunke, Hemant, Sarang, Ramesh Parhande, and Raju Bhandari, it appears that accused No.7 and other co-accused **were keen to teach a lesson to the deceased as he has betrayed Hema. Assuming that a conspiracy was hatched by other co-accused it would be stretching too far to involve the present accused in the alleged conspiracy. It is not possible for me to accept the submission of the learned Additional Public Prosecutor that the threats given by the present accused, when the couple eloped, came true and the deceased was done away. It appears to me that the prosecution is trying to rope in almost entire family of accused No.1 as accused. Apart from the fact that the father, mother and son have been involved in the offence in question, the prosecution has not spared even Hema, daughter of the complainant. As far as she is concerned, nothing is alleged by any witnesses against her. She is a girl who has eloped with the deceased and has in fact married**

with him. Even after they returned, she refused to go to her parents and continued to stay at the house of the complainant. With great persuation she returned to her father's house. She has agreed to annul the marriage with the deceased and in lieu thereof the marriage certificate was torn in the presence of the Registrar. Even remaining away from the deceased, she used to send e-mails wherein she has expressed her love to him and has shown her concern about the health of the deceased Kunal. In view of these facts it is difficult to believe the prosecution story that she is also one of the conspirators.

18 So far as accused Nos.11 and 12, who are friend and manager of the accused No.1 is concerned, in my opinion, the prosecution has falsely involved them as they have given threats to the complainant. Their conduct of taking interest, in the family affairs of accused No.4, in my opinion, appears to be quite natural as they were keen to find out the whereabouts of Hema. Except giving threats there is no material on record to suggest that they are also conspirators. In the F.I.R. Filed by Devendra, the complainant, nothing is alleged against the present accused.

Therefore, it appears to me that this is a case of false implication of the present accused

19 The learned Additional Public Prosecutor has invited my attention to the decision of the Apex Court in the case of Om Wati and anr vs State, through Delhi Admn and ors, reported in AIR 2001 SC 1507 wherein it is laid down that the High Court should not interfere at initial stage of framing of charges merely on hypothesis, imagination and far-fetched reasons. There cannot be any dispute with respect to the above principle laid down by the Apex Court. I am conscious of the fact that the accused are seeking discharge from a serious charge under section 302 of I.P.C. On considering the material on record, prima facie I am of the view that there are no chances of the case ending in conviction of the present accused. Therefore this the stage where the proceedings against the accused can be truncated. In Satish Mehra vs Delhi Administration and anr, l996 SCC (Cri) 1104 the Apex Court has observed that "But when the Judge is fairly certain that there is no prospect of the case ending in conviction the valuable time of the court should not be wasted for holding a trial only for the purpose of formally

completing lthe procedure to pronouce the conclusion on a future date. We are mindful that most of the Sessions Courts in India are under heavy pressure of workload. If the Sessiosn Judge is almost certain that the trial would only be an exercise in futility or a sheer waste of time it is advisable to truncate or snip the proceedings at the stage of section 227 of the Code itself".

20 The learned Additional Public Prosecutor submitted that the case on hand being a case of circumstances, the prosecution has established the chain of circumstances, but merely the accused enraged because of the eloping couple, girl refusing to go to the father even after her return, which has agitated the father- accused No.1, toring of the registration of marriage documents and engagement of the deceaed with another girl, are sufficient circumstances, which in fact proved the earlier threats given by the accused. In my opinion the circumstances, however, even if accepted in its entirety, it creats any suspicion of motive. Therefore the abvoe circumstances at the highest can only suggest that there was some motive, however that motive is not sine qua non for bringing the offence of murder or any crime bring home to the accused. Thus after scrutinising the entire material placed on

record, even if totally accepted, in my opinion they do not make out a case for conviction of the accused and some suspicion or motive cannot serve as sufficient ground for framing the charges in the absence of any material, prima facie showing that a particular motive is pressed into action and that the accused is connected with that action.

21 In view of the above discussion, I allow both the petitions. The impugned orders dated 16th January 2006 and 7th October, 2003 passed below Exhibits 181, 193, 306, 351 and 352 in Sessions Case No.10 of 2002 are quashed and set aside. Petitioners in both the petitions are discharged from all the charges levelled agains them.

22. The learned counsel for the petitioners states that the accused are on bail. In view of the discharge of the petitioners from the Sessions Case No.10 of 2002, their bail bonds stand cancelled.

Rule made absolute in both the petitions.

CHIEF JUSTICE